Petition

81-2075

No.

Office - Supreme Court, U.S.
FILED
MAY 3 1982
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

RUTH A. WOLD,

Petitioner,

vs.

ORIN W. WOLD and GEORGE R. WOLD,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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QUESTIONS PRESENTED

Whether the State of Illinois has deprived petitioner of her life, liberty or property, or procedural rights, without due process of law, and has denied her the protection and equal protection of the laws, in violation of the 14th Amendment, Section 1, to the Constitution of the United States, (a) in holding that an order dismissing an appeal for a purported want of prosecution from an order that did not pass on the merits of the case is res judicata; (b) in holding that that order was not brought up for review by the notice of appeal filed from a later final order in the cause, in that a notice of appeal performs the function of a writ of error and brings up the entire record for review under the Constitution of the State of Illinois; (c) in stating that "We find it exceedingly difficult to precisely state Plaintiff's argu-

ments on appeal on this issue /of res judicata/ considering the rambling and unorganized nature of her complaint and brief which attempt, in large part, to restate the long history of the litigation both in the State and Federal Court between the parties" and failing to note that the purpose of the detail was to establish that the Order of the Circuit Court of October 3rd, 1974, was neither valid nor final because the procedure followed by the trial court deprived her of her procedural rights in violation of the 14th Amendment, Section 1, to the Constitution of the United States, as specified in the complaint and reply briefs filed in the Appellate Court; (d) in stating "We assume the parties are very familiar with each others arguments and therefore we directly address the determinative issue", overlooking the fact that it was the duty of the Court to state the argument for the benefit

of the bar and the courts and the People of the State of Illinois, for if the Order of October 3rd, 1974, was neither final nor valid it could not be res judicata; and (e) in holding that the Order of October 3rd, 1974, was res judicata that petitioner had no interest in the property, the subject matter of this litigation, by her premarital agreement deed of September 19th, 1968, or by reason of her marriage on September 21st, 1968, when those issues were not involved in the litigation on October 3rd, 1974; and (f) in failing to hold that the Act of March 25th, 1974, as amended, 3 Illinois Revised Statutes 1979, Chapter 110, Paragraphs 501-536, especially Paragraph 8, is unconstitutional as being a violation of the 14th Amendment, Section 1, to the Constitution of the United States; and (g) and the failure of the Supreme Court of Illinois in denying a petition for appeal as a matter of right under Article VI, Sec-

4(c), that question arising under the Constitution of the State of Illinois and under the Constitution of the United States having arisen for the first time in and as a result of the action of that court, having given rise to the appeal as a matter of right under Article VI, Section 4(c), and, hence, under the Constitution of the United States, 14th Amendment, Section 1.

Whether the action of the United States District Court for the Northern District of Illinois, Eastern Division, in dismissing the complaint in this case in the original action filed in that court under the abstention doctrine has deprived the plaintiff of her life, liberty or property without due process of law, and has denied her the protection and equal protection of the laws, in violation of her Federal rights under the 5th Amendment to the Constitution

of the United States, and under Article III, Section 2, of that constitution.

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In The

SUPREME COURT OF THE UNITED STATES

October Term, A.D. 1981

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RUTH A. WOLD,

Petitioner,

vs.

ORIN W. WOLD and
GEORGE R. WOLD,

Respondents.

==========

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

To The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

RUTH A. WOLD, Petitioner, by her attorney HUGH M. MATCHETT, petitions the Court to issue a writ of certiorari to the Supreme Court of Illinois to review an order of the

entered on February 2nd, A.D. 1982, denying a petition for appeal as a matter of right or, in the alternative, for leave to appeal, from a judgment of the Appellate Court of Illinois, Second Judicial District, affirming one judgment of the Circuit Court of McHenry County, Illinois, dismissing her suit against ORIN W. WOLD, and dismissing her appeal as a matter of right from another judgment of that court dismissing her suit against GEORGE R. WOLD, each judgment of the trial court dismissing her complaint for specific performance of a premarital contract for the conveyance of real estate and a bill to quiet title and for damages on the ground of res judicata.

This petition is due to be filed on or before May 3rd, 1982.

This suit was before this Court as Case No. 78-1835 on petition for a writ of certiorari to the United States Court of Ap-

peals for the Seventh Circuit, from a judgment of that court affirming a judgment of the United States District Court for the Northern District of Illinois, Eastern Division, dismissing the same complaint filed as a diversity suit under the abstention doctrine. This Court denied the petition. The complaint was refiled in the State court under protest that the Federal courts have deprived her of her rights under Article III Section 2 of that constitution, and without due process of law, and have denied her the protection and equal protection of the laws, in violation of the 5th Amendment to the Constitution of the United States.

OPINION BELOW

The Order Disposing Of Appeal Under Supreme Court of Illinois Rule 23 is set out verbatum in the Appendix at Page 14.

JURISDICTION

The jurisdiction of this Court is based on United States Code, Title 28, Section 1257.

ILLINOIS CONSTITUTIONAL PROVISIONS AND STATUTORY PROVISIONS INVOLVED IN THIS CASE

The Constitution of Illinois, Article VI, Section 1, provides:

> "The judicial power is vested in a Supreme Court, an Appellate Court and Circuit Courts."

Article VI, Section 4(a), provides:

> "The Supreme Court may exercise original jurisdiction * * * as may be necessary to the complete determination of any case on review."

Article VI, Section 4(c), provides:

> "Appeals from the Appellate Court to the Supreme Court are a matter of right if a question under the Constitution of the United States or of this State arises for the first time in and as a result of the action of the Appellate Court."

Article VI, Section 6, provides:

> "Appeals from final judgments of a Circuit Court are a matter of right to the Appellate Court in the Judicial District in which the Circuit Court is located * * * . The Appellate Court may exercise original jurisdiction when necessary to the complete determination of any case on review. * * *."

Article VI, Section 9, provides:

"Circuit Courts shall have original jurisdiction of all justiciable issues * * * ."

STATEMENT OF THE CASE

Petitioner Ruth A. Wold and Respondent Orin W. Wold are husband and wife, having been united in marriage on September 21st, 1968, and the Respondent George R. Wold is the adult son of Respondent Orin W. Wold by a previous marriage. On September 19th, 1968, Respondent Orin W. Wold "for and in consideration of marriage and other considerations listed below and the sum of ten dollars, in hand paid", said "other considerations" being: "(1) Grantor consents to grantor's wish that she give up her business of many years as a associate in the medical practice of Dr. Eduard Poser and together with the grantor manage the hunt club business of which the grantor is president and holder of the controlling interest, and

which property adjoins but is separate and apart from the property conveyed in this document. (2) Grantee will in the ownership of this conveyance of real estate make all decisions regarding its use or disposal. (3) Grantee also consents to give up her residence of many years and to move to this Bull Valley acreage being conveyed to live in a new residence to be designed and built for her by grantor", conveyed and warranted to her by warranty deed all the property described in paragraph 4 of the complaint, all of it located in McHenry County, Illinois, and the deed recorded in the Office of the Recorder of Deeds of McHenry County, Illinois, on December 29th, 1976, as Document No. 683187, the entire Indenture being attached to the complaint. It is this Deed that the Appellate Court held in barred by res judication, in sustaining the action of the Circuit Court in dismissing a complaint for specific performance and a bill to quiet

in her and for damages.

The Appellate Court also held that the petitioner's petition for a change of venue was barred because it requested a change of venue from the Circuit Court of McHenry County, Illinois, and the 19th Judicial Circuit of which it is a part, on the ground that she and her attorney feared that she could not get a fair trial before any of the judges because they were prejudiced against her and her attorney, and that in making the request she had abused the venue statute, and forfeited any right to a change of venue.

The Appellate Court and the Circuit Court denied her any relief by reason of a judgment in other litigation between the parties that Petitioner had used undueinfluence on Orin W. Wold and held title under other deeds from him obtained after marriage as a constructive trustee. Petitioner contends that the judgment of October 3rd, 1974, relied on was

neither final nor valid because it was made in a consolidated suit in which the parties had agreed that the suits were consolidated for all purposes precluding entry of a final judgment until all issues had been adjudicated, prematurely attempting to make a final decision as to credibility of witnesses as to one issue before all the issues were determined, and for other reasons hereinafter specified, as a result of which petitioner claims she was deprived of her property without due process of law, and denied the protection and equal protection of the laws, in the previous litigation, and in this litigation. Furthermore, the deed of September 19th, 1968, was not put in issue by the parties.

REASONS FOR GRANTING THE WRIT

The first reason for granting the writ is fair play, for this case was originally filed as a diversity suit but petitioner was forced to refile it in the circuit court after it was dismissed by the district court under the abstention doctrine, the court of appeals affirmed, and this Court denied certiorari, under protest that the United States, by its judicial department, by the exercise of that doctrine, has deprived her of her Federal rights under the Constitution of the United States, and under the Feieral statutes, without due process of law, in violation of the Fifth Amendment to the Constitution of the United States, with disastrous results, the State courts having deprived her of her property and procedural rights without due process of law, and having denied her the protection and equal protection of the laws, be-

cause of their prejudice against her and her attorney, as hereinafter stated, and this Court ought to examine into the dire effect the enforcement of that doctrine has had in this particular suit in regard to her Federal rights and enforce those rights, for the least that the Federal courts can do after forcing a litigant who has a Federal right to have her case tried in a Federal court have it tried in a State court, is to require the State court to give her the fair trial she would have received in a Federal court, and this Court is the only Federal court that can do so at this stage of the litigation, although it might be possible for this Court to remand the case to the United States District Court for a new trial to guarantee that right.

The second reason for granting the writ is that petitioner challenged the validity of the Illinois venue statute as construed by the Appellate Court in its opinion to bar

a petition for a change of venue on a general charge of prejudice from more than one judge, and the forfeiture of all right to a change of venue from any judge because the request for a change from more than one judge is an abuse of the venue statute, as being a violation of due process of law, it being the duty of the court, without regard to any statute, to exercise its inherent power to do whatever may be done under the general principles of jurisprudence to insure to the citizen a fair trial, whenever his life, liberty, property or character is at stake, the possession of such power involving its exercise as a duty whenever public or private interest require. It is a common law and constitutional due process of law right. (This point was raised at pages 1 to 8 of petitioner's reply brief, in general as a matter of Illinois law, but at page 2, petitioner stated: "The right to a change of venue and the extent to which he

may be entitled to exercise that right, is a substantial right not dependent on the statute. It is a common law and constitutional due process of law right." It follows that it is not only a right under the Illinois constitution, it is a right under the 14th Amendment, Section 1, to the Constitution of the United States.) The Appellate Court ignored the argument.

The third reason for granting the writ, and, perhaps, the most important reason, is that the Constitution of Illinois, Article VI, Section 4(e), provides that: "Appeals from the Appellate Court to the Supreme Court are a matter of right if a question under the Constitution of the United States or of this State arises for the first time in and as a result of the action of the Appellate Court." Petitioner filed a petition to appeal as a matter of right or, in the alternative, as a matter of sound judicial discretion. The Clerk advised that the pe-

tition for leave to appeal had been received. The Clerk advised that the petition for leave to appeal had been denied. The State and Federal constitutional question of due process of law in regard to the venue statute, and the failure of the Appellate Court to consider it, a right to appeal as a matter of right from the Appellate Court to the Supreme Court of Illinois, for the question of the validity of the venue statute arose for the first time in and as a result of the action of the Appellate Court, but to all intents and purposes the petition was treated merely as a petition for leave to appeal. Since the State constitutional provision governs both State and Federal constitutional questions, and this Court is necessarily interested in whether the Supreme Court of Illinois decided anything in denying the petition for leave to appeal, at least as far as the Federal constitution-

al question is concerned, and should grant the writ, and inquire of the Supreme Court of Illinois whether it did or did not pass on the constitutional issues that arose for the first time in and as a result of the action of that court. It is only a matter of academic interest to this Court whether the Supreme Court of Illinois is violating the State constitution in failing to treat petitions for appeal as a matter of right as petitions for appeal as a matter of right and is treating them as petitions for leave to appeal instead but this Court and the litigants and the public have a right to know what is going on under the 14th Amendment, Section 1, to the Constitution of the United States. The Supreme Court of Illinois has been behaving in this wierd way since July 1st, 1971, and it should stop.

The fourth reason for granting the writ is that the Appellate Court of Illinois has

applied the doctrine of res judicata in a situation to which it is not applicable, by reason of the fact that the Judgment of October 3rd, 1974, is neither final nor valid, it being invlaid because the procedure followed by the court in the original litigation between the parties did not follow customary due process of law applicable to a suit in equity, with the result that petitioner has been deprived of her property and procedural rights without due process of law, in violation of her Federal rights under the 14th Amendment, Section 1, to the Constitution of the United States, specified in great detail in the complaint and briefs and totally ignored by the trial court and Appellate Court and the Supreme Court of Illinois.

CONCLUSION

The petition should be allowed and the judgments should be reversed and the cause remanded for proceedings not inconsistent

with the judgment of this Court.

Respectfully submitted,

Hugh M. Matchett

HUGH M. MATCHETT

APPENDIX

Order Of January 22nd, 1980
(C 101)

This matter coming before the Court on the Motion of Ruth A. Wold for a Change of Venue and For leave to amend the complaint and the Motion of George R. Wold to dismiss Plaintiff's Complaint, the parties being present in Court, and the Court being fully advised in the premises:

IT IS HEREBY ORDERED

1. Plaintiff's motion for change of venue is denied;

2. Plaintiff may file an amendment to the complaint within 7 days;

3. With regard to Defendant George Wold's Motion to dismiss the complaint,

(a) Plaintiff shall file a responsive memorandum within 28 days.

(b) Defendant shall file a Reply within seven days thereafter addressed to the Complaint and Amendment.

(c) The motion is set down for hearing on March 17, 1980 at 9:30 A.M. before Judge Brody.

January 22, 1980 s/ Leonard Brody Judge

Order Of March 17th, 1980
(C 107)

This matter having come before the Court on the Motion of George R. Wold to dismiss the Complaint as to him, the Court Having established a briefing schedule and having set this matter down for hearing today, all pursuant to Order of this Court entered on January 22, 1980 with Mr. Katchett being present on said date, the plaintiff having failed to file a responsive memorandum and having failed to appear in Court this date;

It Is Hereby Ordered that the Complaint as it applies to George R. Wold is hereby dismissed. This is a final and appealable order and the Court finds there is no just reason for further delay or appeal. It is further ordered that Ruth A. Wold shall pay to defendant George R. Wold his costs.

March 17, 1980 s/Leonard Brody Judge

Order Of April 18th, 1980
(C 114)

This matter having come before the Court on the motion of Ruth A. Wold renewing her petition for change of venue from all the judges and associate judges of the 19th Circuit, and, inter alia, to vacate the Court's order of March 17, 1980 dismissing the complaint and to vacate the Court's order of January 22, 1980, the Court having heard argument of the parties and otherwise being fully advised in the premises;

It Is Hereby Ordered that the aforesaid motion of plaintiff is hereby denied.

April 18, 1980 s/ Leonard Brody Judge

Notice Of Appeal Filed May 1st, 1980
(C 115)

APPEAL
TO THE
APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM
THE CIRCUIT COURT OF THE 19TH JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS
CASE NO. 79 CH 203

RUTH A. WOLD,
Plaintiff-Appellant,
vs
ORIN W. WOLD,
Defendant,
and
GEORGE R. WOLD,
Defendant-Appellee.

NOTICE OF APPEAL

TO: ROSS, HARDIES, O'KEEFE, BABCOCK & PARSONS
One IBM Plaza, Suite 3100, Chicago, Illinois 60611

RUTH A. WOLD, Plaintiff-Appellant, appeals to the Appellate Court of Illinois, Second Judicial District, from the Circuit Court of the 19th Judicial Circuit, McHenry County, Illinois, Case No. 79 CH 203, from the Judgment of March 17th, 1980, and from the Order of January 22nd, 1980, denying her timely motion in the Complaint for a change of venue from all the judges and associate judges of the Circuit Court of the 19th Judicial Circuit, Illinois, and from the Order of April 18th, 1980, denying her renewed motion for a change of venue from said judges and associate judges and to vacate the Judgment of March 17th, 1980. She

prays that the Judgment of March 17th, 1980, be reversed, and that the cause be remanded, with directions to grant the motion for a change of venue, and for summary judgment in her favor against GEORGE R. WOLD, or for him to answer the complaint.

Dated: May 1st, 1980.

s/ HUGH M. MATCHETT
HUGH M. MATCHETT
10 S. La Salle Street
Suite 1502
Chicago, Illinois 60603
312-643-0318

Her Attorney

CERTIFICATE

I, HUGH M. MATCHETT, a member of the bar of the Supreme Court of Illinois certify that I mailed a copy of this Notice of Appeal to which this certificate is attached, with a copy of this certificate attached, in a sealed envelope addressed to ROSS, HARDIES, O'KEEFE, BABCOCK & PARSONS, One IBM Plaza, Suite 3100, Chicago, Illinois 60611, on May 1st, 1980, at 10 S. La Salle Street, Chicago, Illinois 60603, before 2:30 P.M., first class postage prepaid.

s/ Hugh M. Matchett
HUGH M. MATCHETT

Judgment Of September 18th, 1980

This matter coming on to be heard upon motion of Defendant ORIN WOLD for leave to file his appearance and motion to dismiss and upon motion of Plaintiff for change of venue and motion for default judgment and the Court having heard argument and being fully advised in the premises;

It is hereby ordered that motions of the Plaintiff for change of venue and default judgment are hereby denied and it is also ordered that the motions of Defendant ORIN WOLD are granted. It is therefore ordered that the complaint as it applies to ORIN WOLD is hereby dismissed. This is a final and appealable order and the Court finds there is no just reason for further delay or appeal. It is further ordered that RUTH A. WOLD shall pay to Defendant ORIN WOLD his costs.

Enter

s/ Leonard Brody Judge

Notice Of Appeal Filed September 22nd, 1980

Appeal
To The
Appellate Court Of Illinois
Second Judicial District
From
The Circuit Court Of The 19th Judicial Circuit
McHenry County, Illinois
Case No. 79 Ch 203

RUTH A. WOLD,
Plaintiff-Appellant,
vs
ORIN W. WOLD and
GEORGE R. WOLD,
Defendants-Appellees.

Appellate Court of Illinois, Second Judicial District, Case No. 80-314

Notice Of Appeal

RUTH A. WOLD, Plaintiff-Appellant, appeals to the Appellate Court of Illinois, Second Judicial District from the Circuit Court of the 19th Judicial Circuit, McHenry County, Illinois, Case No. 79 CH 203, from the Judgment of March 17th, 1980, and from the Judgment of September 18th, 1980, and from the Order of January 22nd, 1980, denying her timely petition in the complaint for a change of venue from all the judges of the Circuit Court of the 19th Judicial Circuit, Illinois, and from the Order of April 18th, 1980, and from the Order of September 18th, 1980, denying her renewed petition for a change of venue from them, and from the Order of April 18th, 1980, denying her motion to vacate the Judgment of March 17th, 1980, and her motion for summary judgment against George R. Wold on all issues but the issue of damages, and from the Order of September 18th, 1980, denying her petition for summary judgment against ORIN W. WOLD on all issues other than the issue of damages. She prays that this appeal be consolidated with Case No. 80-314, and that all judgments and orders complained of be reversed and the cause be remanded with directions to enter summary judgment on all issues other than damages in favor of her, and that the issue of damages be set down for trial at an early date. This notice of appeal will be filed by mail on September 22nd, 1980.

Dated: September 22nd, 1980 s/Hugh M. Matchett
HUGH M. MATCHETT

3 Illinois Revised Statutes 1979
Chapter 110 Section 501 Page 398

A change of venue in any civil action may be had in the following situations:

* * *

(2) Where any party or his attorney fears that he will not receive a fair trial in the court in which the action is pending, because the inhabitants of the county are or the judge is prejudiced against him, or his attorney, or the adverse party has an undue influence over the minds of the inhabitants. In any such situation the venue shall not be changed except upon application, as provided in this Act, or by consent of the parties.

3 Illinois Revised Statutes 1979
Chapter 110 Section 502 Page 398

When a change of venue is granted it may be to some other judge in the same county, or in some other convenient county, to which there is no valid objection.

3 Illinois Revised Statutes 1979
Chapter 110 Section 503 Page 398

Every application for a change of venue by a party or his attorney shall be by petition, setting forth the cause of the application and praying a change of venue, which shall be verified by the affidavit of the applicant. A petition for change of venue shall not be granted unless it is presented before trial or hearing begings and before the judge to whom it is presented has ruled on any substantial issue in the case, provided that if any grounds for such change of venue occurs thereafter, a petition for change of venue may be presented based upon such grounds.

3 Illinois Revised Statutes 1979
Chapter 110 Section 505 Page 398

The application may be made to the court in which the case is pending, reasonable notice thereof having been given to the adverse party or his attorney.

3 Illinois Revised Statutes 1979
Chapter 110 Section 508 Page 398

No party shall have more than one change of venue.

3 Illinois Revised Statutes 1979
Chapter 110 Section 511 Page 398

The order for a change of venue may be made subject to such equitable terms and conditions as safety to the rights of the parties may seem to require, and the judge in his discretion may prescribe.

3 Illinois Revised Statutes 1979
Chapter 110 Section 522 Page 399

When any defendant in a proceeding for contempt arising from an attack occuring otherwise than in open court, upon the character or conduct of a judge, which proceeding is pending before the judge whose character or conduct was impugned, fears that he will not receive a fair and impartial trial before such judge, he may petition the court for a change of venue from such judge, such petition to be verified by affidavit of the defendant, and thereupon such change shall be granted.

RUTH A WOLD, Plaintiff-Appellant, vs.
ORIN W. WOLD and GEORGE R. WOLD,
Defendants-Appellees.

No. 80-767

FILED

OCT 15 1981

ORDER DISPOSING OF APPEAL
UNDER SUPREME COURT RULE 23

Plaintiff, Ruth A. Wold, appeals the trial court's separate dismissals on pre-trial motions of her complaint against defendants Orin W. Wold and George R. Wold. The complaint against George R. Wold was dismissed on March 17, 1980, and plaintiff separately appealed that order in No. 80-314, but plaintiff failed to file a brief and this court dismissed the appeal. Leave to appeal was denied on January 30, 1981, by the Supreme Court. On September 18, 1980, the trial court also dismissed the complaint against Orin W. Wold, and plaintiff has filed this appeal from that dismissal and has included George R. Wold as a party. George R. Wold has filed a motion to dismiss the appeal and we ordered that to be taken with the case.

This appeal is but one of several appeals brought to this court by Ruth A. Wold arising from a marital discord and property dispute consuming some 12 years of litigation between her and her husband Orin, Orin's son George and the Bull Valley Management Company, of which Orin was the president. The issues raised in this appeal are: whether the trial court erred in denying a petition for a change of venue; whether the complaint states a cause of action for specific performance of a pre-marital contract for the conveyance of certain real estate and a bill to quiet title thereto; and whether the cause of action is barred by the statute of limitations or by res judicata. As the parties are very familiar with the pleadings and the facts alleged therein, we do not recite them except as necessary to resolve the issues raised before us.

Upon filing her complaint in this cause, plaintiff incorporated in her pleadings allegations purporting to petition for a change of venue from Judge Roland A. Hermann and "all the other Judges of the Circuit Court of the 19th Judicial Circuit because she and her attorney Hugh M. Matchett, fear that she will not receive a fair trial because they are prejudiced against her and her attorney * * *." The motion was denied and plaintiff contends this was error. In a civil case, where a party seeks a

change of venue from one judge, a general allegation of prejudice will suffice. (Corbetta Constr. v. Lake County Public Bldg. Com. (1978), 64 Ill. App. 3d 313, 326.) Although it was error for the trial court to deny the motion as it pertained to Judge Harmann, from our review of the record Judge Harmann did not hear any part of this cause, therefore, no prejudice resulted. (See Kechner v. A.E. Staley Manufacturing Co. (1977), 50 Ill. App. 3d 258, 261.) If a party seeks a change of venue from more than one judge, the petition must contain specific allegations to support the charges of prejudice against the additional judges, and the motion may only be granted in the sound discretion of the trial judge following a hearing. (Rosewood Corp. v. Transamerica Insurance Co. (1974), 57 Ill. 2d 247, 254.) The general allegation made here is obviously insufficient to meet this test. (See Corbetta Constr. v. Lake County Public Bldg. Com. (1978), 64 Ill. App. 3d 313, 326.) Although plaintiff filed a renewed motion which again in general terms alleged the prejudice of all the judges in the 19th Judicial Circuit, it was filed after the trial court had granted both of the defendants' motions to dismiss and was correctly denied as the court had already ruled on a substantive matter. Lebovitz v. Cahill (1979), 69 Ill. App. 3d 614, 617-18.

Next, we consider the appeal by Ruth A. Wold of the dismissal of her complaint as it pertains to George R. Wold. After examining the briefs and the record in this case as well as the record in No. 80-314, we grant George R. Wold's motion to dismiss as the earlier dismissal (No. 80-314) is res judicata to this appeal. See Bass v. Scott (1979), 79 Ill. App. 3d 224.

We now consider whether the trial court's dismissal of the complaint against Orin W. Wold was proper under the doctrine of res judicata. The present suit seeks specific performance of a premarital agreement of September 19, 1968, which allegedly provided that Orin W. Wold would convey to Ruth A. Wold certain real property in McHenry County for and in consideration of their marriage. The alleged premarital agreement which was attached to the complaint appears in the form of a deed and is purportedly signed by Orin W. Wold. It is admitted by plaintiff that the property in question in this suit as set forth in the premarital agreement is part of the same property previously determined by this court to be held by her in a constructive trust for Orin W. Wold. (See Wold v. Wold (1976), 43 Ill. App. 3d 773.) We must determine whether the principle of res judicata bars this suit. We find it exceedingly difficult to precisely state plaintiff's arguments on appeal on this issue considering the rambling and unorganized nature of her complaint and brief which attempt, in large part, to restate the long history of litigation both in State and Federal Court between the parties. We assume the parties are very familiar with each others arguments and therefore we directly address the determinative issue.

The definition and purport of the principle of res judicata is adequately and ably set forth in Charles E. Harding Co. v. Harding (1933), 352 Ill. 417, 426-27, as recently reiterated by our supreme court in Consolidated Distilled Products v. Allphin (1978), 73 Ill. 2d 19, 25-26. The doctrine extends to all grounds of recovery or defense which might have been presented in the prior suit. For the former adjudication to act as a bar to the subsequent action, it must be shown that the cause of action, the thing to be recovered and the parties are the same in both proceedings. Clearly, the parties and the thing to be recovered (the real property) are the same in this cause as they are in Wold v. Wold (1976), 43 Ill. App. 3d 773. The principle of res judicata applies where, although the cause of action is not the same, some fact or question had been determined and adjudicated in a former suit and the same fact or question is again put in issue in a subsequent suit between the same parties. (Allphin at 26.) In Wold. v Wold, this court affirmed the trial court decision that a constructive trust for the benefit of Orin W. Wold in the same property at issue herein had been established contrary to the plaintiff's prior defense that transfer by deed to her of the property was a gift. In the trial of the previous suit, the trial court had consolidated Orin Wold's suit for a declaration of a constructive trust, Ruth A. Wold's petition for a writ of mandamus and several other suits and counterclaims between the parties. In the trial court's written decree of 10 pages consisting of 39 separate findings, it expressly made findings that "[t]he plaintiff (Orin W. Wold) had made no provision for the defendant's (Ruth A. Wold) security prior to the transfers"; "[t]he defendant actually prepared three sets of deeds, although only one set of deeds was recorded"; [t]here is no reliable evidence that the deeds and instruments of transfer were executed on different dates than the dates they purported to bear, except one assignment separate from the certificate was executed on August 28, 1969, although dated August 25, 1969"; and "[i]t can reasonably be inferred that the defendant's motive was a scheme to wrongfully induce the conveyances and transfers permanently to her and that she had no intention of ever returning the property so held to the plaintiff, or hold the property on his behalf."

We conclude that even though the plaintiff now claims ownership of the same property at issue in the prior case under a theory different from that presented in the prior case, "the assertion of a different kind of theories of relief still constitutes a single cause of action if a single group of operative facts giverise to the assertion of relief." (Baird & Warner, Inc. v. Addison Indus. Pk. (1979), 70 Ill. App. 3d 59, 64.) The prior suit was a consolidated action between these parties involving ownership of the property in question with numerous findings of fact involving the execution of deeds, the motive for transfer of the prope and the premarital and marital relationship between the parties. The ownership of the same piece of property in question here was directly in issue in the prior litigation and evidence introduced regarding deeds between the parties to that property and intent of the parties relating to whether it was plaintiff's by gift or in

a constructive trust for defendant. In short, the theory raised herein could have been presented as a claim or defense in the prior suit in order to fully litigate the issue before the court. The rule of res judicata is founded upon the plainest and most substantial justice, that litigation should have an end and that no person should be unnecessarily harassed with a multiplicity of suits. (Dorland v. Steinbrecher (1964), 50 Ill. App. 2d 344, 347.)

Accordingly, we find that plaintiff's suit against Orin W. Wold was properly dismissed by the trial court as the prior litigation between the parties is res judicata.

APPEAL DISMISSED AS TO GEORGE R. WOLD
AFFIRMED AS TO ORIN W. WOLD

REINHARD, VAN DEUSEN, UNVERZAGT

Letter from the Clerk of the Supreme Court of Illinois dated February 2nd, 1982, advising Hugh M. Matchett, Petitioner's Attorney, that the Court had denied he petition for leave to appeal that day.

Appendix

Office - Supreme Court, U.S.
FILED
JUN 3 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-2075

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

RUTH A. WOLD,

Petitioner,

vs.

ORIN W. WOLD and GEORGE R. WOLD,

Respondents.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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In The

Supreme Court of the United States

October Term, 1981

RUTH A. WOLD,

Petitioner,

vs.

ORIN W. WOLD and GEORGE R. WOLD,

Respondents.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

IN THE

APPELLATE COURT OF ILLINOIS

SECOND JUDICIAL DISTRICT

Case No. 80-767

ORDER DISPOSING OF APPEAL UNDER SUPREME COURT OF ILLINOIS RULE 23 FILED OCTOBER 15, 1981

Plaintiff, Ruth A. Wold, appeals the trial court's separate dismissals on pre-trial motions of her complaint against defendants Orin W. Wold and George R. Wold. The complaint against George R. Wold was dismissed on March 17, 1980, and plaintiff separately appealed that order in No. 80-314, but plaintiff failed to file a brief, and this court dismissed the appeal. Leave to appeal was denied on January 30, 1981, by the Supreme Court. On September 18, 1980, the trial court also dismissed the complaint against Orin W. Wold, and plaintiff has filed this appeal from that dismissal

and has included George R. Wold as a party. George R. Wold has filed a motion to dismiss the appeal and we have ordered that to be taken with the case.

This appeal is but one of several appeals brought to this court by Ruth A. Wold arising from a marital discord and property dispute consuming some 12 years of litigtion between her and her husband Orin, Orin's son George and the Bull Valley Management Company, of which Orin was the president. The issues raised in this appeal are: whether the trial court erred in denying a petition for a change of venue; whether the complaint states a cause of action for specific performance of a pre-marital contract for the conveyance of certain real estate and a bill to quiet title thereto; and whether the cause of action is barred by statute of limitations or by res judicata. As the parties are very familiar with the

pleadings and the facts alleged therein, we do not recite them except as necessary to resolve the issues raised before us.

Upon filing her complaint in this cause, plaintiff incorporated in her pleadings allegations purporting to petition for a change of venue from Judge Roland A. Hermann and "all the other Judges of the Circuit Court of the 19th Judicial Circuit because she and her attorney Hugh M. Matchett, fear that she will not receive a fair trial because they are prejudicied against her and her attorney * * *." The motion was denied and plaintiff contends this was error. In a civil case, where a party seeks a change of venue from one judge, a general allegation of prejuidice will suffice. (Corbetta Constr. v. Lake County Public Bldg. Com. (1978), 64 Ill. App. 3d 313, 326.) Although it was error for the trial court to deny the motion as it pertained to Judge Hermann,

from our review of the record Judge Hermann did not hear any part of this cause, therefore, no prejudice resulted. (See Kechner v. A.E. Staley Manufacturing Co. (1977), 50 Ill. App. 3d 258, 261.) If a party seeks a change of venue from more than one judge, the petition must contain specific allegations to support the charges of prejudice against the additional judges, and the motion may only be granted in the sound discretion of the trial judge following a hearing. (Rosewood Corp. v. Transamerica Insurance Co. (1974), 57 Ill. 2d 247, 254.) The general allegation made here is obviously insufficient to meet this test. (See Corbetta Constr. v. Lake County Public Bldg. Com. (1978), 64 Ill. App. 3d 313, 326.) Although plaintiff filed a re renewed motion which again in general terms alleged the prejudice of all the judges in the 19th Judicial Circuit, it was filed af-

ter the trial court had granted both of the defendants' motions to dismiss and was correctly denied as the court had already ruled on a substantial matter. Lebovitz v. Cahill (1979), 69 Ill. App. 3d 614, 617-18.

Next, we consider the appeal by Ruth A. Wold of the dismissal of her complaint as it pertains to George R. Wold. After examining the briefs and the record in this case as well as the record inNo. 80-314, we grant George R. Wold's motion to dismiss as the earlier dismissal (No. 80-314) is res judicata to this appeal. See Bass v. Scott (1979), 79 Ill. App. 3d 224.

We now consider whether the trial court's dismissal of the complaint against Orin W. Wold was proper under the doctrine of res judicata. The present suit seeks specific performance of a premarital agreement of September 19, 1968, which allegedly

provided that Orin W. Wold would convey to Ruth A. Wold certain real property in McHenry County for and in consideration of their marriage. The alleged premarital agreement which was attached to the complaint appears in the form of a deed and is purportedly signed by Orin W. Wold. It is admitted by plaintiff that the property in question in this suit as set forth in the premarital agreement is part of the same property previously determined by this court to be held by her in a constructive trust for Orin W. Wold. (See Wold v. Wold (1976), 43 Ill. App. 3d 773.) We must determine whether the principle of res judicata bars this suit. We find it exceedingly difficult to precisely state plaintiff's arguments on appeal on this issue considering the rambling and unorganized nature of her complaint and brief which attempt, in large part, to restate the long history of

of litigation both in State and Federal Court between the parties. We assume the parties are very familiar with each others arguments and therefore we directly address the determinative issue.

The definition and purport of the principle of res judicata is adequately and ably set forth in Charles E. Harding Co. v. Harding (1933), 352 Ill. 417, 426-27, as recently reiterated by our supreme court in Consolidated Distilled Products v. Allphin (1978), 73 Ill. 2d 19, 25-26. The doctrine extends to all grounds of recovery or defense which might have been presented in the prior suit. For the former adjudication to act as a bar to the subsequent action, it must be shown that the cause of action, the thing to be recovered and the parties are the same in both proceedings. Clearly, the parties and the thing to be recovered (the real property) are the same in this cause as they are

in Wold v. Wold (1976), 43 Ill. App. 3d 773. The principle of res judicata applies where, although the cause of action is not the same, some fact or question had been determined and adjudicated in a former suit and the same fact or question is again put in issue in a subsequent suit between the same paryies. (Allphin at 26.) In Wold v. Wold, this court affirmed the trial court decision that a constructive trust for the benefit of Orin W. Wold in the same property at issue herein had been established contrary to the plaintiff's prior defense that transfer by deed to her of the property was a gift. In the trial of the previous suit, the trial court had consolidated Orin Wold's suit for a declaration of a constructive trust, Ruth A. Wold's petition for a writ of mandamus and several other suits and counterclaims between the parties. In the trial court's written decree of 10 pages consisting of 39 separate findings, it ex-

pressly made findings that "(t)he plaintiff (Orin W. Wold) had made no provision for the defendant's (Ruth A. Wold) security prior to the transfers"; "(t)he defendant actually prepared three sets of deeds, although only one set of deeds was recorded"; (t)here is no reliable evidence that the deeds and instruments of transfer were executed on different dates than the dates they purported to bear, except one assignment separate from the certificate was executed on August 28, 1969, although dated August 25, 1969"; and "(i)t can reasonably be inferred that the defendant's motive was a scheme to wrongfully induce the conveyances and transfers permanently to her and that she had no intention of ever returning the property so held to the plaintiff, or hold the property on his behalf."

We conclude that even though the plaintiff now claims ownership of the same property at issue in the prior case under a theory different from that presented in the prior case, "the assertion of a different kind of theories of relief still constitutes a single cause of action if a single group of operative factsgive rise to the assertion of relief." (Baird & Warner, Inc. v. Addison Indus. Pk. (1979), 70 Ill. App. 3d 59, 64.) The prior suit was a consolidated action between these parties involving ownership of the property in question with numerous findings of fact involving the execution of deeds, the motive for transfer of the property and the premarital and marital relationship between the parties. The ownership of the same piece of property in question here was directly in issue in the prior litigation and evidence introduced regarding deeds between the parties to that property

and intent of the parties relating to whether it was plaintiff's by gift or in a constructive trust for defendant. In short, the theory raised herein could have been presented as a claim or defense in the prior suit in order to fully litigate the issue before the court. The rule of res judicata is founded upon the plainest and most substantial justice, that litigation should have an end and that no person should be unnecessarily harassed with a multiplicity of suits. (Dorland v. Steinbrecher (1964), 50 Ill. App. 2d 344, 347.)

Accordingly, we find that plaintiff's suit against Orin W. Wold was properly dismissed by the trial court as the prior litigation between the parties is res judicata.

APPEAL DISMISSED AS TO GEORGE R. WOLD
AFFIRMED AS TO ORIN W. WOLD

REINHARD, VAN DEUSEN, UNVERZAGT

Illinois Supreme Court
Robert H. Gillespy
Clerk
Supreme Court Building
Springfield, Ill.62706
(217) 782-2035

February 2, 1982

Mr. Hugh M. Matchett
Attorney at Law
10 S. La Salle St., S#1502
Chicago, IL 60603

No. 55908 - Ruth A. Wold, petitioner, vs. Orin W. Wold, et al., respondents. Leave to appeal, Appellate Court, Second District

You are hereby notified that the Supreme Court today denied the petition for leave to appeal in the above entitled cause. Moran, J. took no part.

Very truly yours,

s/Robert H. Gillespy

Clerk of the Supreme Court

Opposition

Office - Supreme Court, U.S.
FILED
JUN 18 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-2075

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

RUTH A. WOLD,

Petitioner,

vs.

ORIN W. WOLD and GEORGE R. WOLD,

Respondents.

BRIEF IN OPPOSITION TO PETITIONER'S APPLICATION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a substantial federal question warranting consideration by this court is presented by the action of the Illinois Supreme Court in refusing to review the decision of the Illinois Appellate Court dismissing petitioner's appeal.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

RUTH A. WOLD,

Petitioner,

vs.

ORIN W. WOLD and GEORGE R. WOLD,

Respondents.

BRIEF IN OPPOSITION TO PETITIONER'S APPLICATION FOR A WRIT OF CERTIORARI

STATEMENT OF THE CASE

This Petition arises out of the dismissal of petitioner's appeal by the Illinois Supreme Court after the Illinois Appellate Court for the Second Judicial District had found that the matters contained in petitioner's appeal had been previously adjudicated. Petitioner claims that the action of these courts denied her due process. The factual background of this litigation is helpful in resolving the question, how much process is due the petitioner.

Commencing in 1969 and extending through 1974, Petitioner Ruth A. Wold, Respondent George R. Wold and his father, Orin W. Wold, were involved in various

intra-family actions, crossclaims and counterclaims against one another. The general subject of these actions was certain personal property and real property located in McHenry County, Illinois. These various actions were consolidated, and following four weeks of trial, the Circuit Court of McHenry County, Illinois entered a judgment order and decree on October 3, 1974 in the case styled *Orin W. Wold v. Ruth A. Wold*, No. 70-1072. Pursuant to that Decree, Ruth A. Wold was declared a constructive trustee of the real and personal property in issue.

Ruth A. Wold thereafter appealed from the entry of this Decree. The Appellate Court of Illinois for the Second Appellate District affirmed. *Wold v. Wold*, 43 Ill. 3d 773, 357 N.E.2d 627 (2d Dist. 1976). A petition for leave to appeal to the Supreme Court of Illinois was denied on March 31, 1977. (Ill. Supreme Court, Docket No. 49170).

Thereafter, petitioner instituted a confusing barrage of legal proceedings in both state and federal courts in the apparent hope of overturning the initial Decree against her. In particular, three lines of proceedings have directly affected George R. Wold: collateral attacks on the Decree entered in the original suit, No. 70-1072; a federal court action filed in the Northern District of Illinois; and an action in Chancery filed in the Circuit Court of McHenry County, Illinois.

A synopsis of the various legal proceedings follows:

a. Collateral Attacks on the Initial Decree.

Beginning less than two weeks after the Illinois Supreme Court refused her initial petition for appeal on March 31, 1977, Ruth A. Wold launched a series of col-

lateral attacks in an attempt to overturn judgment against her.

On April 12, 1977, Ruth A. Wold filed a motion with the trial court to vacate the Decree entered on October 3, 1974. This motion was denied on May 13, 1977.

On June 13, 1977, Ruth A. Wold filed with the trial court a motion to vacate the Decree entered on October 3, 1974; to vacate the judicial deed dated May 20, 1977; and to vacate the court's order of May 13, 1977 denying her April 12, 1977 motion to vacate.

On February 16, 1979, Ruth A. Wold filed an appeal from the entry of the October 3, 1974 Decree. Apparently, no docket number was ever given to this appeal.

On September 24, 1979, Ruth A. Wold filed with the trial court a motion to vacate Orders of December 19, 1978, March 22, 1979, March 23, 1979 and August 24, 1979.

On October 31, 1979, Ruth A. Wold filed another appeal, No. 79-616, from the entry of the October 3, 1974 Decree, from various other orders entered thereafter, and from the Appellate Court's order of October 12, 1979 finding that all pending "petitions and motions and requests should be, and they hereby are denied for lack of jurisdiction, all issues in this case having been decided or having become moot by reason of previous adjudication." This appeal was dismissed for want of prosecution on May 13, 1980.

On May 28, 1980, Ruth A. Wold filed with the Appellate Court a motion to vacate its order of May 13, 1980. This motion was denied on June 5, 1980.

On August 5, 1980, Ruth A. Wold filed a Petition for Appeal as a Matter of Right, No. 53711, in the Supreme Court of Illinois.

b. Federal Court Action.

While petitioner herein was pursuing her collateral attacks on the October 3, 1974 Decree of the Circuit Court of McHenry County, she also filed a complaint in the Federal District Court for the Northern District of Illinois on October 27, 1977, No. 77 C 3996. Since the complaint raised the same issues then pending in the Circuit Court of McHenry County, the federal complaint was dismissed on February 1, 1978.

This dismissal was affirmed with costs by the United States Court of Appeals for the Seventh Circuit on March 12, 1979, No. 78-1332. A petition for a writ of certiorari to this Court was denied on October 1, 1979, No. 78-1835.

Finally on October 30, 1979, Ruth A. Wold filed with the Seventh Circuit a Motion for Stay of Mandate which was denied on November 14, 1979.

c. Complaint in Chancery.

On November 1, 1979, Ruth A. Wold filed a Complaint in Chancery, No. 79 CH 203, in the Circuit Court of McHenry County. This was only two days after she had filed her Motion for Stay of Mandate in the United States Court of Appeals for the Seventh Circuit and one day after she had filed her appeal No. 79-616 in the Appellate Court of Illinois, Second Judicial District. This complaint varied only slightly from the earlier complaint filed in Federal Court, and, in fact, incorporated it by reference. The complaint also contained a motion for change of venue from all of the judges of the Circuit Court of the Nineteenth Judicial Circuit.

On January 22, 1980, the motion for change of venue was denied, and on March 17, 1980, the case was dis-

missed as to George R. Wold. On April 18, 1980, Defendant herein filed a renewed petition for change of venue and a motion to vacate the March 17, 1980 order of dismissal and the January 22, 1980 order denying the motion for change of venue. These were denied on April 18, 1980.

On May 5, 1980, Ruth A. Wold appealed from the dismissal of 79 CH 203 as to George A. Wold, No. 80-314. After granting one extension of time, the Appellate Court for the Second District of Illinois on its own motion dismissed No. 80-314 for want of prosecution on September 23, 1980. A Petition for Leave to Appeal, No. 54178, was dismissed by the Illinois Supreme Court on January 30, 1981.

On June 20, 1980, Ruth A. Wold filed two petitions in the Supreme Court of Illinois, one petition for general administrative or supervisory relief, and one for seeking, *inter alia*, direct appeal of the dismissal of Appeal No. 79-616. These petitions were denied on June 25, 1980.

On September 22, 1980, one day before No. 80-314 was dismissed, Ruth A. Wold appealed the dismissal of Orin W. Wold to the Appellate Court Second District, No. 80-767, and added George R. Wold as a co-appellee in an attempt to "consolidate" this appeal with No. 80-314. George R. Wold's motion to dismiss No. 80-767 was granted on October 15, 1981. The dismissal of Orin W. Wold was affirmed at the same time.

Ruth A. Wold has filed with the Supreme Court of Illinois a Petition for Leave to Appeal from the orders entered on October 15, 1981 in Appeal No. 80-767, No. 55908. That petition was denied on February 2, 1982.

REASONS FOR DENIAL OF WRIT

Due to petitioner's manner of presentation, it is not clear whether petitioner now seeks review of the Illinois Appellate Court decision that held petitioner's most recent appeal was barred by principles of *res judicata*, of the Illinois Supreme Court's refusal to review that decision, or of the action of the United States District Court for the Northern District of Illinois in dismissing the federal suit filed in October, 1977, review of which this Court previously declined to undertake. When one strips away the verbosity from the petition for certiorari, however, the issue becomes simply this: petitioner is disgruntled because she has been unsuccessful in overturning the order of the Illinois trial court of October 3, 1974.

I.

THE PETITIONER HAS FAILED TO RAISE ANY SUBSTANTIAL FEDERAL QUESTIONS WARRANTING THIS COURT'S CONSIDERATION.

A. Petitioner Has Had Her "Days" In Court.

Petitioner claims that "fair play" mandates the granting of this petition because the courts have not afforded petitioner a fair opportunity to be heard on the invalidity of the October 3, 1974 order. Quite to the contrary, the state and federal courts in Illinois have allowed petitioner to continue to rail against the order of October 3, 1974, despite the fact that her adamant refusal to accept the finality of that order has led to her gross abuse of the legal system and a waste of valuable judicial resources. Indeed, petitioner still attempts to argue that the order of October 3, 1974 is not final despite the fact that she instituted the appeal from that order.

When the October 3, 1974 order was affirmed by the Illinois Appellate Court and the Illinois Supreme Court denied a petition for leave to appeal on March 31, 1977, this litigation should have come to an end. Instead, since that time, Respondent George R. Wold has had to oppose two additional lawsuits, five additional appeals to appellate courts (state and federal), six additional petitions to Supreme Courts (state and federal), and at least six different motions to vacate or other collateral attacks upon various orders entered by these courts. All of these proceedings concerned the same subject matter and issues finally determined on March 31, 1977, when the Illinois Supreme Court refused petitioner's appeal. The Illinois courts properly applied principles of *res judicata* to bar further consideration of these matters. In asserting that these matters are finally settled, the courts did not deny petitioner her due process rights.

B. The Illinois Venue Statute Is Constitutional.

Petitioner makes the absurd argument that the Illinois venue statute, as applied by the Illinois Appellate Court, unconstitutionally denied her a right to a fair trial. It is apparently conceded that Illinois law respecting venue was correctly applied. In Illinois, a party in a civil action may seek a change of venue from a single judge upon a general allegation of the prejudice of the judge. *Corbetta Constr. Co. v. Lake County Public Bldg. Comm'n.*, 64 Ill. App. 3d 313, 381 N.E.2d 758 (1978). If the party seeks a change of venue from more than one judge, the petition must contain specific allegations of prejudice against the additional judges. *Rosewood Corp. v. Transamerica Insurance Co.*, 57 Ill. 2d 247, 311 N.E. 2d 673 (1974). Petitioner's argument is that the requirement that she *specifically* allege the prejudice of the various judges places an unconstitutional burden upon

her. This requirement is a reasonable one, however, calculated to avoid wholesale forum shopping and to preserve precious judicial resources. Petitioner's unwillingness to specifically allege the prejudice of some two dozen Illinois judges implies her inability to do so. Since she is unable to claim the prejudice of the judges, it is clear that no due process violation resulted.

C. The Illinois Supreme Court Properly Exercised Its Discretion In Refusing To Review The Appellate Court's Decision.

Petitioner next argues that the petition should be granted because the Illinois Supreme Court purportedly violated the Illinois Constitution in refusing to treat this appeal as one taken as a matter of right. Petitioner concedes that this issue of state law is not properly before this Court, but states that the Fourteenth Amendment has been violated because the Illinois Supreme Court has not announced to the public that it will abandon the Illinois Constitution. The argument is preposterous and based upon a faulty mode of reasoning: appeals of the Illinois Supreme Court are a matter of right "if a [state or federal constitutional] question . . . arise for the first time in and as a result of the action of the Appellate Court"; the appellate court's rejection of petitioner's venue argument was an action which gave rise for the first time to a constitutional question. Clearly, if the Illinois Constitution were so interpreted, *every* action of the appellate courts would be automatically reviewable and the Illinois Supreme Court would lack the discretion to limit its review to cases which raise legal questions of substantial importance. There is no constitutional right of petitioner to have her case reviewed by the state's highest court. It would therefore be inappropriate for this Court to interfere with Illinois' orderly administration of its appellate processes.

D. The Illinois Court Properly Applied The Principles Of *Res Judicata*.

No substantial federal question is raised by the manner in which the state courts concluded that the instant case was barred by the principles of *res judicata*. The matters placed into issue by this appeal were fully litigated and determined adversely to the petitioner in eight years of litigation between 1969 and 1977. Even if this were not so, the matters asserted by petitioner were "within the compass of the issues determined therein, and were, therefore, as effectively adjudicated as if they had been specifically put forward and specifically adjudged." *Hudson v. Lewis*, 188 F.2d 679 (5th Cir. 1951); *Resolute Insurance Co. v. State of North Carolina*, 276 F. Supp. 660 (E.D.N.C. 1967), *aff'd*, 397 F.2d 586 (4th Cir.), *cert. denied*, 393 U.S. 978 (1968).

Refusing to admit of the finality of those decisions, however, petitioner has since 1974 sought relief through the entire apparatus of both the state and federal courts. Petitioner has not been denied her right to be heard; she has had every opportunity to be heard.

CONCLUSION

For all of the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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June 17, 1982